

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-139533-15

Date:
June 06, 2016

X:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

State:

A:

Y:

Dear :

This letter responds to a letter dated November 30, 2015, and subsequent correspondence, requesting relief under § 1362(g) of the Internal Revenue Code to make a new S corporation election prior to the expiration of time provided in § 1362(g).

The information submitted states that X was formed in State on Date 1 and that it elected to be treated as an S corporation effective Date 2. On Date 3, A, an individual who had been the sole shareholder of X, sold 100% of the shares of X to Y, a C corporation, thereby causing a termination of X's S corporation election. On Date 4, A repurchased X. X requests permission to reelect to be an S corporation, effective Date 4. Date 4 is prior to the expiration of the five-year waiting period imposed by § 1362(g).

Section 1362(a) provides that except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be

terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that any termination under § 1362(d)(2)(A) is effective on and after the date of cessation.

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), the corporation (and any successor corporation) shall not be eligible to make an election under § 1362(a) for any taxable year before its fifth taxable year which begins after the first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) of the Income Tax Regulations provides that absent the Commissioner's consent, an S corporation whose election has terminated (or a successor corporation) may not make a new election for five taxable years as described in § 1362(g). The Commissioner, however, may permit the corporation to make a new election before the 5-year period expires.

The corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the absence of such fact, consent will ordinarily be denied unless it can be shown that the event causing the termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation, and was not a part of a plan on the part of the corporation or of such shareholders to terminate the election.

In the present case, based on all of the facts submitted and representations made, all of the stock in X is currently held by A, who owned all of the stock in X on the date of the termination. Thus, not more than 50 percent of the stock in X is owned by persons who did not own stock in X on the date of the termination. Further, the event causing the termination, the acquisition by a C corporation, Y, of the stock of X, was reasonably within the control of X and its shareholders.

Accordingly, X is denied permission to reelect to be an S corporation prior to the expiration of the 5-year period prescribed by § 1362(g) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed regarding whether X is otherwise eligible to be an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: